

that this agency, other regulators, and courts have employed in setting and reviewing rates-of-return for other industries subject to rate regulation. Accordingly, we propose that the rate-of-return for regulated cable service shall be established, at least in part, by identifying the rate-of-return of a surrogate industry or activity, or of several industries or activities.⁵⁰ We propose that this be accomplished by first choosing a surrogate that has comparable risk to that of the cable industry. We propose that we then determine the surrogate's cost of capital by ascertaining the cost of equity and the cost of debt of the surrogate and then deriving a composite, weighted average cost of capital based on the capital structure (debt/equity ratio) of the surrogate. The resulting figure would be the rate-of-return of the surrogate that would then weigh heavily in our determination of the rate-of-return for regulated cable service.

49. We also propose that we carefully consider the differences in the financial characteristics and capital structure of the surrogate or surrogates and the cable industry in determining the rate-of-return of regulated cable service. The cable industry differs from mature regulated industries like telephone, gas and electric, each of which is characterized by a steady return on investment. The cable industry is still a relatively new industry, characterized by growth and reinvestment of earnings with the possibility that the expectations of investors in the cable industry differ from other regulated industries. Moreover, the cable industry, unlike industries such as telephone, relies heavily on private and semi-public sources of capital.⁵¹ We solicit comment, including detailed economic

⁵⁰ A regulated utility is entitled to earn a return on property equal to the returns of other business undertakings attended by corresponding risks and uncertainties (not speculative ventures). Bluefield Waterworks and Improvement Company v. Public Service Commission of West Virginia, 262 U.S. 679, 692-693 (1923). The return to equity investors should be commensurate with the return on investments in other enterprises having corresponding risks. That return, moreover, should be sufficient to assure confidence in the financial integrity of the enterprise so as to maintain its credit and attract capital. Federal Power Commission v. Hope Natural Gas Company, 320 U.S. 591, 603 (1944).

⁵¹ We seek comment on the capital structure of the cable industry in comparison to traditional regulated industries. We initially have found that current cable industry practice is difficult to evaluate given that much financing is provided by private or closely held companies that do not publish SEC scrutinized statements of position. At least some cable operators have very high leverage (that is, debt contributing all but a small portion of total capital). We seek comment on the impact of the

analysis, on the extent that these differences should affect our development of a rate of return for regulated cable service. We also solicit expert economic analysis on what is a reasonable return on investment for regulated cable service and on what models the Commission should rely in order to achieve a reasonable rate of return. We solicit comment on this general approach to determining the rate-of-return of the cable industry.⁵²

50. Regulated Cable Service Surrogates. We tentatively conclude that the choice of the surrogate to use in determining the rate-of-return of regulated cable service should be guided primarily by an assessment of risk. Thus, we propose to choose a surrogate that experiences the same approximate risk of economic loss as the provision of regulated cable service. We solicit comment on other factors that could guide our choice of a surrogate or surrogate. In the Notice of Proposed Rulemaking in MM Docket No 92-266 we proposed the Standard & Poors 400 Industrials (S&P 400) as a surrogate and sought comment comparing the average cost of capital for companies in the S&P 400 to regulated cable service.⁵³ We tentatively conclude that the S&P 400 offers a broad range of investor expectations of the trade-off between risk and return, and that investors in S&P 400 firms experience risks of economic loss that are roughly equivalent to those experienced in the provision of regulated cable service. Accordingly, we tentatively conclude that either the S&P 400 as a whole, or a subgroup of firms within it, can constitute a reasonable surrogate for regulated cable service and that the cost-of-capital of the S&P 400 shall be our primary guide in determining the rate-of-return of regulated cable service. We solicit comment on this analysis and tentative conclusion. Furthermore, we seek comment on the extent that companies in the S&P 400 demonstrate a range of financial strength -- as manifested by the range of ratings -- that would accurately reflect the range of financial strength for companies in the

requirements that we could adopt in this proceeding on the current overall financial structure of cable industry. For instance, if we relied upon the traditional capital structure of regulated industries (e.g. 50% debt/50% equity) in determining the cost of capital for the cable industry, what would be the impact on the cable industry?

⁵² We also solicit comment on how often the prescription should be revisited and represcribed. If the S&P 400 approach described below is adopted, should the allowed rate of return be automatically updated annually? If a more elaborate methodology is adopted, how often should a proceeding be undertaken?

⁵³ Notice of Proposed Rulemaking, 8 FCC Rcd at 549.

cable industry. We also solicit comment on whether a different surrogate should be used, such as regulated telephone companies.

51. Cost of Equity. Cost of equity can never be more than estimated because there is no written guarantee that a stockholder will receive any return. Generally, we have relied upon market based, forward looking methods to evaluate investor expectations for surrogate common stocks. There are two common methods of measuring the cost of equity, the discounted cash flow method ("DCF")⁵⁴ and the risk premium analysis method,⁵⁵ that

⁵⁴ The DCF methodology relies upon the use of current dividends and stock prices combined with analyst estimates of long term earnings growth to estimate the return on equity demanded by investors. According to the DCF formula, the return investors expect to earn on a share of common stock equals the dividend yield they expect from that share plus the long-term growth they expect in earnings. For telephone utilities, the current dividend yield is a significant fraction of the investor expected return. For the S&P 400, current dividend yield is a much lower fraction of the investor expected return. For the cable industry, investors appear to rely predominantly on long term earnings and, thus, the DCF estimate is wholly dependent on the analyst long term growth estimates. Parties proposing surrogates with no current dividends should pay particular attention to the stability and range of long term analyst estimates. For a fuller discussion of the DCF methodology, see e.g., Telco Reform Notice, 7 FCC Rcd at 4695-4697 (1992).

⁵⁵ The risk premium method estimates the cost of equity by developing a risk premium, typically by comparing historic data on equity returns and bond yields, that can be added to a current long term bond rate, such as US Treasury bonds. There is no set formulation of the risk premium method. One that has achieved some theoretical prominence is the capital asset pricing model (CAPM). A more recent version of the CAPM is the arbitrage pricing model. It should be noted that neither the CAPM nor the arbitrage model has yet been given great weight in regulatory proceedings. Two of the more serious problems have been determining an acceptable risk premium and adjusting the measure of risk to reflect current (rather than historic) investor risk expectations. CAPM uses estimates of the risk of a surrogate stock by looking at how the stock price has fluctuated in relationship to the market as a whole. Its risk estimator, beta, equals one if the stock is no riskier than the overall stock market. Utility stocks have typically had betas significantly less than one (indicating less risk than the stock market as a whole). CAPM also requires an estimate of the risk premium -- generally taken as the historic difference between some measure of stock returns for the stock market taken as a whole, and yields on US Treasury bonds. The beta for the S&P 400, which is itself broadly representative of the

could be used to estimate cost of equity. We seek comment on which approach or combination of the two approaches we should use.

52. In the Telco Reform Notice we examined the historic (1982-1992 1stQtr) risk premium between the yield on public utility "Aa" rated bonds and companies with estimated costs of equity in the lower half of the S&P 400.⁵⁶ The risk premium ranged from 1.5% to 4.3%, with half of the estimates falling between 3% and 4%, another third evenly falling in the ranges 2.5%-3.0% and 4.0%-4.5%, and the remainder falling below 2.5%. We tentatively conclude that the cost of equity for risks comparable to the average S&P 400 company would be no more than 5% above the yield on public utility "Aa" grade bonds. Based on recent bond yield of approximately 7.5%, this would produce a cost of equity of no higher than 13%. As can be seen in Appendix C, reproduced from the 1990 Telco Represcription Order, if the risk of regulated cable service is judged to be comparable to the risks of the lowest quartile of S&P 400 companies, the cost of equity would be closer to 12%. If regulated cable service was judged to be more comparable to the risks of the highest quartile of S&P 400 companies, the cost of equity would be around 15%. We solicit comment on whether we should use a cost of equity based on the average S&P 400 company or on companies in a particular earnings quartile of the S&P 400, and on the relative risks of cable programing service as compared to the S&P 400 companies.⁵⁷ We also request comment on other potential surrogates for the regulated cable services of the cable industry. If we use the S&P 400, or a subgroup of S&P 400 companies, as the primary surrogate for determining an appropriate cost of equity of regulated cable service, we tentatively conclude that the cost of

market, is one. The CAPM estimate for a surrogate company is calculated by multiplying beta times the risk premium and adding the current yield on bonds. We seek comment on the beta and risk premium appropriate for regulated cable service. For a fuller discussion of this methodology see 1990 Telco Represcription Order, 5 FCC Rcd at 7522. We also seek comments comparing the appropriateness of the DCF and CAPM approaches for setting the cost of equity for regulated cable service.

⁵⁶ Telco Reform Notice, 7 FCC Rcd at 4695-7.

⁵⁷ This proposal combines several methods to estimate the cost of equity capital. First, the DCF (discounted cash flow) method is used to develop cost of equity estimates for the firms listed in the S&P 400 during the last decade. We then compare those estimates to bond yields to calculate the typical risk premium over the yield on low risk corporate debt demanded by investors in S&P 400 stocks. This risk premium is then used to estimate the current cost of equity for the median S&P 400 company.

equity will be in the range of 12% - 17%. This, in turn, assuming a debt/equity ratio of 50%, would lead to a rate-of-return for regulated cable service of between approximately 10% to 12.4%. Given market changes in the cost of debt and equity, we tentatively conclude that a rate of return somewhere in the range of 10% to 14%, after taxes, would reflect a reasonable balancing of subscriber and cable operator interests and that we could select a final rate of return within this range to achieve our balancing of goals for cost-based rates for cable service. We solicit comment on selection of a maximum rate of return for regulated cable service within this range.

53. Cost of Debt. We solicit comment on what methodology the Commission should adopt for measuring the cost of debt. We tentatively conclude that this will be in large part a factual examination of the cost of debt of the surrogate. We solicit comment on what debt instruments, or weighting of different types of instruments, we should evaluate for this purpose. We also solicit comment on whether we should include preferred stock as debt. Finally, we solicit comment on whether we should accord any weight to existing (embedded) debt of the cable industry in determining an appropriate cost of debt.

54. Measures of Financial Performance. As indicated, we propose to carefully examine the impact on the cable industry of the rate of return -- and of the other cost-of-service standards -- that we could prescribe in this proceeding. A critical aspect of that assessment will be an appropriate measure of current financial performance of the cable industry and of the provision of cable service. We solicit comment on what methodology we should employ for this purpose. We tentatively reject a cash-flow analysis as the appropriate measure of financial performance because it does not take into account the character of cash revenues and expenditures. Thus, cash expenditures that represent investment or return of capital (loan amortization) may be appropriately characterized as positive earnings for purposes of measuring financial performance. We tentatively conclude that we will evaluate the current performance of provision of cable service subject to regulation under the cost-of-service standards, including the prescribed rate-of-return, that we will adopt in this proceeding. We will measure financial performance based on costs presented in accordance with our cost-of-service requirements. We solicit comments on this tentative conclusion.

55. We also solicit comment on what test year methodology should be employed for measuring the rate-of-return for a cable company making a cost-of-service showing. Traditionally, regulatory authorities use a test year which measures a regulatee's operating experience during a twelve-month period as a basis for determining representative levels of revenues, expenses, ratebase and capital structure. Commenting parties should also address what test year methodology should be adopted:

historical test year; future test year; or a combined historical and future test year. Under a historical test year, the cable operator's operating experience is adjusted for known and measurable changes. This provides flexibility in allowing for inflation or attrition changes. Furthermore, the historical test year need not be based on a calendar year. A future test year is a projection of what the level of revenues, expenses, ratebase and capital structure will be in the rate year, with the operating experience adjusted for projected changes. Last, a combined historical and future test year allows some portion of the test year to be based upon recent actual operating experience with the remainder of the test year based on financial projections. We also solicit comment on whether we should use one of these test year methodologies for determination of all costs and revenues in cost-of-service showings.

56. We also seek comment on whether we should incorporate into our test year methodology an investment cycle approach to measuring the rate-of-return. Under an investment cycle approach, recoverable costs might be allocated over the life of the investment based on the proportion of total subscriber usage in the test year, with the rate-of-return measured over the projected life of investment. Under this approach negative or low current earnings might not justify an upward adjustment in rates if higher earnings are expected by investors later in the investment cycle. We solicit comment on this proposal. We also solicit comment on whether this period should be prospective only or should include some historic data (e.g. centered on current period). We further seek comment on what a reasonable investor time horizon period for measuring performance would be. Should the Commission base this on the average prescribed depreciable life of investment or some other measure?

3. Cost Accounting and Cost Allocation Requirements

(a) Cost Accounting Requirements

57. In the Report and Order, we required cable operators to maintain their accounts in accordance with Generally Accepted Accounting Principles (GAAP), unless otherwise directed by the Commission.⁵⁸ We also required cable operators to maintain

⁵⁸ 47 C.F.R. Section 76.924(b). GAAP consists of the objectives, conventions, and principles that have evolved through the years to govern the preparation and presentation of financial statements. These requirements apply to the area of financial accounting as distinct from other areas of accounting such as tax accounting or cost accounting. Financial accounting serves primarily the purpose of presenting the financial condition and operating results of a firm to present and future stockholders or creditors, security analysts, and other interested parties.

accounts in a manner that will enable identification of appropriate costs and application of cost assignment and cost allocation procedures to cost categories necessary for cost-of-service showings.⁵⁹ We required that such categories be sufficiently detailed and supported to permit verification and audit against the company's accounting records.⁶⁰

58. Financial accounting practices of cable operators will provide the underlying basis for identification of expenses and revenues involved in the provision of regulated cable television service. We have already required that cable operators comply with GAAP, but have not specified any accounts that must be maintained, or any categories of costs that must be derived from accounts, for purposes of demonstrating costs of providing cable service. We have prepared, and attached in Appendix A, possible supplemental financial and cost accounting requirements that we could adopt in this proceeding. These requirements would provide substantial supporting documentation to presentations of costs by cable operators in cost-of-service showings. They could also facilitate allowance or disallowance of costs in cost-of-service showings by providing for identification of types of costs in the specified accounts. On the other hand, they could impose additional burdens on cable operators. We solicit comment on the relative costs and benefits of these possible additional requirements. We will tailor any additional financial or cost accounting requirements that we adopt to an analysis of the costs and benefits. We also solicit comment on whether we should establish a more comprehensive system of accounting for cost-of-service showings similar to the Uniform System of Accounts (USOA) for telecommunications companies set forth in Part 32 of the Commission's rules. A uniform system of accounts has the advantage of facilitating both comparison of costs between firms, and an analysis of the costs of individual firms. On the other hand, it can impose significant burdens. In the event that we elect to adopt a uniform system of accounts, we solicit comment on ways that it could be simplified to reduce burdens.

b. Cost Allocation Requirements

59. In the Report and Order, we required that cable operators generally aggregate expenses and revenues at either the franchise, system, regional, or company level in a manner consistent with the practices of the operator as of April 3, 1993.⁶¹ We also established cost allocation requirements. Costs aggregated at a higher level are to be allocated to the franchise

⁵⁹ 47 C.F.R. Section 76.924(c).

⁶⁰ Id.

⁶¹ 47 C.F.R. Section 76.924(d).

level proportional to the number of subscribers in the franchise area, and costs are to be allocated between tiers proportional to the number of channels on the tier.⁶² We established procedures for allocation of common costs, and required that cost categories for regulated cable service exclude unrelated expenses and revenues.⁶³ We solicit comment on whether we should adopt different or supplemental cost allocation requirements for purposes of developing cost-based rates for regulated cable service. We note that, in the near future, telephone services, personal communications services (PCS) transport, and other telecommunications services may be offered by cable operators. We seek comment on whether we should adopt new or supplemental cost allocation requirements to govern allocation of costs between regulated cable service and unrelated activities.

60. We see a continuum between the poles of attempting to uniquely identify all the costs of a franchise, and MSO-wide cost averaging. The former approach requires accounting, allocations, and full ratebase - rate of return investigations at the franchise level. While this approach would provide local franchising authorities with the maximum discretion in determining the costs recoverable in local basic tier rates, it places a very high burden on both the regulatory authority and the cable operator. Currently only a few ratebase - rate of return proceedings are conducted each year by all authorities practicing cost-of-service regulation. Under this approach it is conceivable that thousands of cost-of-service showings may be filed, with any single MSO a party to hundreds of such proceedings. Another potential effect is that the amount of MSO-wide price uniformity would be reduced.

61. At the other end of the averaging continuum, cost-of-service showings would be greatly simplified by using a unitary, industry-wide cost of capital; company-wide (MSO) average per subscriber ratebase, operating expenses and depreciation; and franchise specific levies (taxes and obligations). The revenue requirement would be developed at total company level and the average per subscriber revenue requirement would be allocated to a specific franchise. The Commission would evaluate cable

⁶² 47 C.F.R. Sections 76.924(e)(1) and (2). We also required that costs of programming and retransmission consent fees be allocated to the tier on which the programming is offered; that franchise fees to be allocated to equipment and installations, program service tiers, and subscribers in a manner most consistent with the methodology of assessment by local franchise authorities; and that costs of public, educational, and governmental access channels be directly assigned to the basic service tier where possible. 47 C.F.R. Sections 76.924(e)(3)-(4).

⁶³ 47 C.F.R. Sections 76.924(f) and (g).

programing service rates subject to complaint, and local franchise authorities would evaluate basic tier rates, based on average per subscriber costs determined in accordance with Commission requirements plus franchise specific levies, divided by the number of channels providing tiered service.

62. Under this approach, with a minimum of franchise-specific data, rates based on cost-of-service showings would be similar across the franchise operations of an MSO. While franchise authorities would not be faced with the full burden of a ratebase - rate of return proceeding, they would have a diminished ability to tailor rates to the specific set of circumstances that apply to a particular franchise. Cost averaging at a high level could also eliminate any reflection in rates of regional cost differences. On the other hand, to the extent that franchises share head-ends and centralized maintenance and customer service facilities, obtain capital from a multi-franchise entity, and benefit from multi-system discounts of programing rates, averaging would reduce duplicative regulatory investigations without loss of accuracy.

63. We seek comment on each of the above approaches. What modifications should be made to the approach that comes closest to achieving the right balance of accuracy and administrative burden? We ask for comment on the ability of operators under each of the three above proposals to recover their costs, make improvements in service, and expand channel capacity and program offerings. We seek comment on the impact these proposals might have on the ability of local franchise authorities to ensure that basic tier rates are reasonable and our ability to ensure, subject to complaint, that cable programing service rates are not "unreasonable".

64. We also seek comment on the level at which general industry practice would allow the major categories of costs to be identified. What costs are generally joint and common and have to be allocated to the franchise level? Is a per subscriber basis the best allocator? What is the impact of a per subscriber allocator on the allocation of costs to systems with low and high penetration rates? How might the number of channels in tiered service be factored into the allocator given that the relationship between cost and channels is not linear?⁶⁴

65. In addition, we request comment on the impact of various amounts of cost averaging on rates. Is franchise-specific costing consistent with our goal of minimizing overall rate disruption? Is cost averaging consistent with our goal that cost-of-service should be a safety net and not an alternative

⁶⁴ For example, a 100 channel system does not have ten times the cost of a 10 channel system.

form of regulation? Under company-wide cost averaging, how would a cost-of-service showing in one franchise affect rates based on the benchmark or cost-of-service showings in other, related franchises? Should operators be able to elect, or local franchise authorities select, the level of cost averaging? Should operator election of cost averaging be all or nothing, or could it differ from franchise area to franchise area? Should the current pattern of rate averaging be an option, and, if so, should the operator and/or the local authority be allowed to increase and decrease averaging over time?

4. Design of Rates

66. In foregoing sections, we have addressed regulatory requirements that will determine the costs that can be recovered in rates for cable service. It is also necessary to establish requirements that will govern the way in which those costs will be recovered in rates. As indicated, in the Report and Order we established cost allocation requirements. We required that costs aggregated at higher levels be allocated to the franchise level proportional to the number of subscribers in the franchise area, and costs are to be allocated between tiers proportional to the number of channels on the tier.⁶⁵ We established procedures for allocation of common costs, and required that cost categories for regulated cable service exclude unrelated expenses and revenues.⁶⁶ We tentatively conclude that these requirements will be sufficient for the design of rates to recover costs permitted under our other regulatory requirements. We solicit comment on this tentative conclusion, and on whether other approaches might result in a more appropriate way of designing rates to recover permitted costs.

5. Affiliate Transactions

67. In transactions that do not involve affiliates, we intend to allow cable operators to recover the actual cost of a service, or to reflect in rates actual revenue earned for providing a service. However, prices set by affiliates may not accurately reflect market prices. In particular, transactions with affiliates can be priced at a level so that the regulated enterprise is paying an undue portion of the costs of the nonregulated affiliate. Hence, they may be poor indicators of underlying value. Accordingly, we propose to establish affiliate transaction rules concerning transactions between the regulated

⁶⁵ 47 C.F.R. Sections 76.924(e)(1) and (2).

⁶⁶ 47 C.F.R. Sections 76.924(f) and (g).

and nonregulated portions of cable systems.⁶⁷ We will adopt rules that will prevent cable systems, in cost-of-service showings, from imposing the costs of nonregulated activities on regulated cable subscribers through improper cross-subsidization.⁶⁸ We believe that this comports with the legislative intent of the Cable Act of 1992, in that the Commission should ensure that rates for cable service are reasonable.⁶⁹ These requirements will generally govern the costs incurred in affiliate transactions that cable operators may seek to recover in rates based on a cost-of-service showing. We tentatively conclude, furthermore, that our affiliate transaction rules should encompass transactions with affiliates concerning programming.⁷⁰ We seek comment on this proposal to adopt affiliation transaction requirements.

⁶⁷ We propose that an affiliated entity shall be an entity with a five percent or greater ownership interest in the cable operator including general partnership interests, direct ownership interests, and stock interests in a corporation where such stockholders are officers or directors or who directly or indirectly own 5 percent or more of the outstanding stock, whether voting or nonvoting. We also intend to include within the scope of our cable affiliate transaction rules those transactions that occur between regulated and nonregulated portions of the same cable company, e.g. intracompany transfers. We solicit comment on these proposals.

⁶⁸ The Commission has in place affiliate transaction rules that govern common carriers. See 47 C.F.R. Section 32.27. These rules were adopted in the Joint Cost proceeding. Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities, Report and Order, CC Docket 86-111, 2 FCC Rcd 1298 (Joint Cost Order) recon., 2 FCC Rcd 6283 (1987), (Reconsideration Order), further recon., 3 FCC Rcd 6701 (1988), (Further Reconsideration Order), aff'd sub. nom. Southwestern Bell Corp. v. FCC, 896 F.2d 1378 (D.C. Cir. 1990).

⁶⁹ See Communications Act, Sections 623(b) and (c), 47 U.S.C. Sections 543(b) and (c).

⁷⁰ In the Report and Order, we generally permitted increases in price capped rates based on increases in programming costs, but limited pass-through of costs incurred with respect to affiliated programmers to no more than inflation. Report and Order, para. 252. We solicit comment on whether we should, and provide notice that we may, in this proceeding adopt our affiliate transaction requirements instead of, or as an alternative to, our inflation limitation on pass-through of programming costs incurred with respect to affiliated programmers.

68. We propose to assure that transactions with affiliates do not result in unreasonable charges for regulated cable service based on cost-of-service showings by prescribing the method of valuation of transactions between cable operators and affiliates and that cable operators seek to recover in a cost-of-service showings. We request comment on what that method should be used to value affiliate transactions. In particular, we invite comment on whether we should require cable system operators to record affiliate transactions at prevailing company prices offered in the marketplace to third parties, whenever the supplying affiliate has established such prices. We note that this option would depart from cost-based valuation and, hence, may not be appropriate for use when the operator has elected to make a cost-of-service showing. Additionally, this method may be inappropriate when there are not substantial third party transactions that establish a credible arm's length transaction price.

69. We also invite comment on whether we should require cable systems to record affiliate transactions at their estimated fair market value. Under this option, we could require cable operators to record each affiliate transaction at the higher of net book cost and estimated fair market value when the regulated cable system is the seller and at the lower of net book cost and estimated fair market value when the regulated cable system is the purchaser. We solicit comment on these alternatives.⁷¹

C. Streamlining Alternatives

1. General Alternatives

70. The Cable Act of 1992 requires the Commission to consider alternatives that will reduce administrative burdens on subscribers, cable operators, franchising authorities and the Commission in fashioning regulations governing the basic service tier.⁷² We may also consider reduction of administrative burdens in establishing regulations governing rates for cable programming

⁷¹ Our cost accounting rules require that cable operators comply with GAAP. We propose that, except as otherwise ordered by this Commission, all accounting for affiliate transactions must comply with GAAP. Under this proposal, costs of the affiliate must additionally be calculated consistent with GAAP for purposes of developing rates based on cost-of-service showings. We also propose to require cable companies to calculate affiliate costs and transactions in accordance with methodologies we adopt for calculating cable companies' costs.

⁷² Communications Act, Section 623(b) (2) (A) and (B), 47 U.S.C. Section 543(b) (2) (A) and (B).

service.⁷³ As indicated, we recognize that traditional rate-of-return regulation can impose significant burdens and that a goal of our overall regulatory approach is feasible implementation.⁷⁴ Accordingly, we seek alternatives that will streamline establishment of cost-based rates by cable operators.

71. We believe that such streamlining could be accomplished by two general approaches. First, we could establish standards of reasonableness, other than the benchmark approach, under which existing rates could be maintained in effect, obviating the need for making cost-of-service showings.⁷⁵ We solicit comment on whether we should establish that initial rates for cable service will be considered reasonable if they are no higher than 1986 rates adjusted forward both by a general measure of inflation and a productivity offset.⁷⁶ In evaluating this proposal, we solicit comment on whether it is reasonable to assume that past regulated rates were reasonable as cost-based, or reasonable on some other basis, and that, therefore, such rates adjusted forward for inflation and a productivity offset could also be considered cost-based. Under this proposal we would use the productivity offset that we discuss below.⁷⁷ We also solicit comment on the appropriate treatment of capital improvements since 1986 under this approach.

72. Another potential alternative to cost-of-service proceedings would be to permit cable operators to document key cost factors, financial characteristics, or other combination of

⁷³ Communications Act, Section 623(c) (1) (A), 47 U.S.C. Section 543(c) (1) (A).

⁷⁴ See para. 12, supra.

⁷⁵ Some of these standards of reasonableness, or approximate variations of them, and other alternatives, were considered in the Report and Order, and/or have been raised on reconsideration. Depending on the adequacy of the record on reconsideration and in this proceeding, we may choose to adopt such alternatives on reconsideration, in this proceeding, or as a combination of these proceedings. Further, we incorporate by reference all issues raised in petitions for reconsideration of the Report and Order. We provide notice that we may adopt in this proceeding any alternatives to cost-of-service showings raised on reconsideration. See n. 10, supra.

⁷⁶ In the Report and Order, we considered but then ruled out using past regulated rates as the primary basis for assessing the reasonableness of rates. However, we did not specifically consider including a productivity offset for adjustments forward from 1986.

⁷⁷ See Section V., infra.

factors that could be said to justify existing rates. Operators who could demonstrate the existence of such factors might then be permitted to charge rates equal to the benchmark plus an "add-on" amount attributable to those extraordinary factors. We solicit comment on what factors could be used to show that such "add-ons" are presumptively cost-justified, thereby obviating the need for cost-of-service showings.

73. Under the second approach to streamlining, we would establish simplified or reduced showing requirements for those operators electing to make cost-of-service showings. One possibility under this approach would be that cable operators would be required to present costs in accordance with our cost-of-service standards in only one or a few areas of costs. For example, if the cost studies that we are initiating in this proceeding reveal that "excess" acquisition costs is the category of costs that most accounts for the competitive and non-competitive differentials, it might be possible to require only that cable operators in cost-of-service showings demonstrate that their proposed cost-based rates exclude all, or a portion of, excess acquisition costs. Or, if we can identify key areas of cost that can account for substantial rate differences, and if the operator has experienced costs in those areas, we could permit rate adjustments based only on showings in those areas. We solicit comment on whether we could limit cost-of-service showings to this or other factors, and on what those factors would be. We also solicit comment on whether we could use ratios of some financial characteristics, such as a ratio of "excess" acquisition costs to other assets, to obviate the need for identification of some types of costs by cable operators. Instead, the ratio would show that the operator's costs in the specified areas are reasonable.

74. Another alternative for simplified cost-of-service showings would be to permit cable operators to justify rates based on average costs of providing cable service based on the costs experienced by all systems, or of similar systems with specified defined characteristics, rather than on the individual costs of the system.⁷⁸ This would be similar to the "average

⁷⁸ At paras. 59-65, *infra*, we discuss permitting or requiring cost averaging by cable operators making cost-of-service showings. Under an average schedule approach, cost-of-service showings would not be based on the individual costs of the operator, averaged or otherwise, but on the average costs of providing regulated cable service. As we discuss, permitting cable operators to average their own costs across several franchise areas served by a system, or across several systems, could significantly reduce administrative burdens on operators and regulators because average costs would not require identification of direct costs at lower levels and because a single set of average costs could support

schedule" regulatory scheme for provision of interstate access by some telephone companies. Under that regulatory scheme, some 700 small local exchange carriers file rates based not on their own costs, but on an average cost schedule. This approach could reduce administrative burdens by obviating the need for identification of individual system costs, but would assume the availability of sufficient representative cost data for the determination of average costs. In the Report and Order, we rejected this alternative for use as the primary method of regulating cable service rates because of the lack of sufficient data and because of questions as to the feasibility of updating average industry cost data. We solicit comment, however, on whether this approach could be used for cost-of-service showings. As we explain, see para. 80, infra, our cost studies will explore the feasibility of collecting this average cost data, and we may undertake to collect such data in this rulemaking. We also envision that permitted average costs that could establish cost-based rates would reflect the cost-of-service standards that we will adopt in this proceeding. We solicit comment on whether we should adopt this alternative.

75. We also solicit comment on whether we could establish an abbreviated cost-of-service showing for significant prospective capital expenditures used to improve the quality of service or to provide additional services.⁷⁹ Under this abbreviated showing, operators seeking to raise rates to recover the costs of a planned upgrade would submit only the costs of the upgrade instead of all current costs. If otherwise in accordance with our cost-of-service requirements, the costs of the upgrade would then be added to the rate permitted under the benchmark and price cap approach to the extent costs could not be recovered under that approach. The recovery of these costs would also need to comply with our cost allocation requirements, particularly to ensure that only the costs allocable to regulated services are imposed on subscribers. This approach could reduce burdens on cable operators and regulators by eliminating the need for development and examination of all costs to support the desired rate, while permitting operators to make facility and service improvements. We seek comment on this streamlining approach,

cost-of-service showings in many service areas, instead of requiring different showings for many different areas. We solicit comment on the use of cost averaging to reduce administrative burdens on cable operators and regulators.

⁷⁹ The extent to which cable operators may include plant under construction in ratebase is discussed at para. 42, supra. The extent to which cable operators will be permitted to include in ratebase plant under construction that represents a system upgrade will be governed by our general treatment of plant under construction.

and, in particular on the extent to which our benchmarks and price cap approach already reflect the cost of system upgrades and service improvements.

2. Small Systems

76. Under the Cable Act of 1992, the Commission is to design its rate regulations in a manner that reduces "the administrative burdens and cost of compliance of cable systems that have 1,000 or fewer subscribers."⁸⁰ In crafting our rate regulations, we have been careful to take this mandate into account.⁸¹ We solicit comment on whether we should additionally establish modifications to the requirements that we will adopt generally to govern cost-of-service showings that will reduce administrative burdens on small systems making cost-of-service showings. Specifically, we solicit comment on appropriate modifications to these requirements to effectuate a reduction in burdens for small systems. We also solicit comment on whether, if we do not adopt one of the general streamlining alternatives discussed above that could be applied to all systems, we should nonetheless adopt some, or all of them, for small systems.

77. Several suggestions have also been made in petitions for reconsideration of the Report and Order that could be used to reduce burdens on small systems. It has been suggested that we exempt small systems from rate regulation.⁸² We solicit comment on whether we should establish an exemption for small systems for some or all rate regulation requirements in order to reduce administrative burdens on them. We ask whether this would be consistent with congressional intent, and whether this could serve to promote the availability of cable television service in rural areas.⁸³ Another suggestion would establish a presumption

⁸⁰ Communications Act, Section 623(i), 47 U.S.C. Section 543(i). For a discussion of what constitutes a small system for purposes of cable rate regulation, see Report and Order, at 293-294.

⁸¹ See Report and Order, at 290-294.

⁸² Alaska Cablevision, Inc., Petition for Reconsideration, filed June 21, 1993, at 5; Arizona Cable Television Assoc., Petition for Reconsideration filed June 21, 1993, at 4. See n. 75, supra.

⁸³ Our telephone company/cable television cross-ownership rules establish an exemption to cross-ownership restrictions for telephone companies operating in rural areas. See 47 C.F.R. Section 63.58. This exemption was established by the Commission to help assure the availability of cable television service in rural areas. Elimination of the Telephone Company/Cable Television

that rates are reasonable if the net revenue of the small system is below a specified level.⁸⁴ We propose these suggestions as additional possibilities for reducing burdens on small systems and solicit comment on them.

78. We also solicit comment on what definition of small systems we should establish for purposes of cost-of-service requirements. Should small system streamlining provisions apply to systems with fewer than 1,000 subscribers owned or affiliated with multisystem operators (MSOs)? Should we limit the application of small system streamlining provisions to systems owned or affiliated with MSOs of certain size? For example, should such provisions be applicable only to systems that have fewer than 1,000 subscribers and that are owned or affiliated with MSOs that have fewer than 500,000 subscribers? In the Report and Order we carefully examined the definition of small systems for purposes of application of provisions designed to reduce administrative burdens.⁸⁵ This issue will also be examined on reconsideration. We will coordinate our treatment of small system burdens for cost-of-service showings with our examination of this issue on reconsideration.

3. Equipment

79. The Cable Act of 1992 requires the Commission to establish standards for setting, on the basis of actual cost, the rate for lease of equipment used by subscribers to receive the basic service tier, including converter boxes and remote control

Cross-Ownership Rules for Rural Areas, CC Docket No. 80-767, 88 FCC 2d 564 (1981).

⁸⁴ Small Systems Coalition, Petition for Reconsideration, filed June 21, 1993, at 18.

⁸⁵ In the Report and Order, we considered whether our regulations applicable to small systems should distinguish between small systems that are independent entities and those controlled by MSOs. In comments to the Notice, cable interests argued against drawing such a distinction, while municipalities and telephone interests contended that the small systems exceptions we establish should apply only to stand-alone small systems. We determined that no distinction should be made between independent small systems and those controlled by large MSOs. We noted first that the plain language of the Cable Act draws no such distinction. Second, we observed that a small system faces the same higher costs associated with serving a small, often rural subscriber base, whether or not the system is controlled by a MSO. Finally, we found that given the decentralized nature of the cable industry, we should not presume that ownership of a small system by a large MSO necessarily would make compliance with our rules less costly.

units, and lease of monthly connections for additional television receivers.⁸⁶ In the Report and Order, we established a comprehensive regulatory scheme for development of cost-based rates for equipment used to receive the basic service tier.⁸⁷ We solicit comment on whether a feasible method of reducing administrative burdens of rate regulation of equipment charges would be to ascertain average equipment costs, for some or all categories of regulated equipment charges, and permit operators to charge these rates as an alternative to the method of determining charges specified in the Report and Order. Average costs could be the average costs experienced by all systems or of groups of systems based on defined system characteristics. As with average schedules for provision of cable service generally, discussed above, this approach would require the availability of representative equipment costs. We solicit comment on whether the Commission should seek to implement this approach. We seek data on average equipment costs, and whether there are significant regional or other differences in equipment costs experienced by cable operators. The Commission may additionally seek to obtain information on equipment costs as part of the cost studies that will be conducted in conjunction with this proceeding. We also solicit comment on whether this approach would comply with the "actual cost" standard for equipment rates in the Cable Act of 1992.

IV. Cost Studies

80. As indicated, in this proceeding we will carefully consider the impact on the cable industry of the requirements that we could adopt to govern cost-based rates for cable service. We have determined that information concerning costs of cable service and the financial and accounting practices of the cable industry is necessary for achieving a complete record on which to base a decision. Comments will provide such information. However, we have determined that in-depth information from individual companies would be helpful. Accordingly, we are delegating to the Chief, Mass Media Bureau authority to conduct cost studies of individual companies. This will include authority to order individual companies to provide information specified by the Bureau. These studies will examine the financial structure and practices of the cable industry and may seek representative cost information to enable us to explore fully some of our streamlining alternatives. We will additionally assess in these cost studies whether any refinements

⁸⁶ Communications Act, Section 623(b)(3), 47 U.S.C. Section 543(b)(3).

⁸⁷ Report and Order, paras. 275-307. Our equipment regulations also apply to equipment used to receive cable programming service. Id. para. 407.

to the competitive benchmark based on costs should be made.⁸⁸ Any information obtained in this manner, or a summary of it, will be placed in the public record of this proceeding.

V. Productivity Offset

81. In the Report and Order, we incorporated an annual inflation adjustment into our price cap mechanism governing rates for cable service. We concluded that the use of an index would help achieve the statutory goal of reducing administrative burdens on cable systems, consumers, and regulators by permitting rate increases when cable operators experience increases in the cost of doing business shared by all sectors of the economy, without requiring cable operators to make, and regulators to consider, cost-of service showings. As a result, we adopted the Gross National Product Price Index (GNP-PI),⁸⁹ which measures inflation in the gross national product, as the annual adjustment index for the cap for basic service tier rates.⁹⁰

82. Under our rules, regulated cable operators are permitted to adjust the capped base per channel rate for the basic service tier annually by the GNP-PI.⁹¹ In addition, there are certain categories of costs that cable operators are permitted to "pass through" to subscribers without a cost of service showing, even if resulting rates exceed the applicable

⁸⁸ In the Report and Order, we stated that we would seek in conjunction with this proceeding further cost information that would enable us to refine the competitive benchmark. Report and Order, at 168-169, para. 277.

⁸⁹ The Bureau of Economic Analysis (BEA) produces two fixed weight indexes that measure inflation in the overall economy. The GNP-PI measures inflation in the gross national product. The Gross Domestic Product fixed weight price index (GDP-PI), which BEA began producing recently, measures inflation in the domestic national product. Report and Order at n. 578.

⁹⁰ Report and Order, at paras. 230-5. The GNP-PI is also currently used by telephone companies for inflation adjustment in annual price cap filings. Policy and Rules Concerning Rates for Dominant Carriers, Second Report and Order, CC Docket 87-313, 5 FCC Rcd. 6786 (1990).

⁹¹ By adjusting the cap to reflect commonly shared increases (or decreases) in the cost of doing business, this approach helps assure that cable operators can earn a reasonable profit despite general price increases, without having to initiate a cost-of-service proceeding. Report and Order at para 237.

price cap."⁹² In the Report and Order, we declined to adopt a productivity offset to the GNP-PI for the non-programming costs incurred by cable companies given the paucity of information in the record that would provide a basis for determining productivity in the cable industry.⁹³ We made it clear, however, that we would seek such information in a Notice.⁹⁴

83. An important consideration under any form of regulation that is based on the costs of production is how to take productivity gains, if any, into account.⁹⁵ While we recognize that the GNP-PI automatically reflects certain productivity gains in the economy, it does not necessarily reflect the entirety of productivity gains experienced by cable operators. While productivity may be measured in several ways, it is our responsibility in this proceeding to consider whether to apply a productivity offset feature in the price cap mechanism for cable operators. Such a productivity offset would mandate reductions in rates based on a prescribed productivity rate.

84. We recognize, however, that productivity can be measured in a number of ways. Perhaps the simplest is a one factor productivity index, such as the Bureau of Labor Statistics labor productivity index. Another, and one we used in establishing a productivity offset under price caps for the telephone industry, is the use of industry-specific studies.⁹⁶

⁹² These costs include: (1) retransmission consent fees; (2) programming costs; and (3) taxes, franchise fees, and the costs of other franchise requirements. We imposed an express limitation, however, on the pass-through of costs for programming services affiliated with cable MSOs. Pass-throughs of increases in programming costs attributable to program services affiliated with such systems are capped at the lesser of the annual incremental percentage increase in such costs or the GNP-PI. Report and Order at para. 252.

⁹³ In addition, the benchmark formula includes declining per channel rates with an increase in the number of channels. Report and Order, at para. 238.

⁹⁴ Report and Order at para. 238.

⁹⁵ Productivity advances in a firm or industry are manifested in increased output from the same amount of factors of production, or equivalently, the same amount of output from decreased levels of factor utilization. See, e.g., Policy and Rules Concerning Rates for Dominant Carriers, 4 FCC Rcd 2873, at para. 198.

⁹⁶ Id. at para. 221-239.

85. As noted in the Order, however, there is insufficient information available in the record to adopt a productivity offset in the price cap mechanism for cable operators. Therefore, we solicit comment on whether there is a valid economic basis for assuming that cable service has been, and will be, experiencing efficiency gains. We invite the submission of industry studies or other expert economic analysis. In undertaking such expert analysis, we invite parties to examine, in particular, the following four options: (1) no productivity offset;⁹⁷ (2) a consumer productivity dividend of 0.5 percentage points;⁹⁸ (3) a "telecommunications" industry adjustment of between 3.0 (AT&T) and 3.3 (local exchange carriers) percentage points;⁹⁹ and (4) a different productivity offset for cable operators.¹⁰⁰

VI. Cost Allocation Requirements for External Costs

86. In Section III. above, we have proposed possible cost accounting and cost allocation requirements that could be applied to development of rates for cable service based on costs. These requirements could also be applied to the development of external costs. Thus, for example, we could permit or require that some categories of external costs be aggregated or averaged at the company level and then allocated to the franchise level and tier in accordance with our cost accounting requirements. We solicit comment on whether we should also apply the cost accounting and

⁹⁷ Under this approach, no productivity offset would be required in light of the fact that some productivity gains that occur from increased cable system capacity are already reflected in the use of per channel rates that decline with the number of channels. Report and Order at para. 238.

⁹⁸ A consumer productivity dividend would provide cable operators with an incentive to generate productivity gains and to share those gains with consumers.

⁹⁹ While we note that the record thus far does not provide a basis for expecting the same productivity gains in the cable industry, such an approach would provide an incentive for future efficiency gains and harmonize incentives for converging technologies.

¹⁰⁰ One commenter, Continental Cablevision, Inc., has suggested that there are embedded inefficiencies in the telephone industry that do not exist in the cable industry. Continental notes that in 1990, the regional Bell companies supported only 244 access lines with each full time employee, while Continental Cablevision's largest regional operation serves over 512 subscribers with each of its full time employees. See Continental Cablevision Comments, Appendix C, at pages 11-12.

cost allocation requirements discussed in Section III. above to development of external costs.

VII. Collection of Information

87. The 1992 Cable Act requires that cable systems file with the Commission or franchising authority, as appropriate, within one year after the date of enactment, and annually thereafter, such financial information as may be needed to administer and enforce regulation of cable rates.¹⁰¹ The Report and Order concluded that the data provided in response to the Order adopted last December,¹⁰² in which we directed a random sample of cable systems to submit certain rate and other information to aid in designing benchmarks, met the statutory requirement regarding the collection of information.¹⁰³ In the Report and Order, we stated that we would examine in the instant proceeding what further requirements should be adopted to implement the information collection requirements of the statute.

88. We solicit comment on two alternatives to implementing the information collection provisions of the statute. First, we solicit comment on whether we should require all systems to submit data annually. For this purpose, we offer for comment the form attached at Appendix B. We also request comment on whether we should require the information that was obtained in our survey of cable systems which formed the basis of our competitive benchmark.¹⁰⁴ We solicit comment on the availability of the information specified in these documents, and the burdens that the collection of this information may impose on operators. To the degree such information is not readily maintained by cable systems, we seek comment on the extent to which we should require systems to develop and maintain it. In particular, we solicit comment on how we should treat small systems in this context, e.g., whether we should exempt small systems from the collection of information requirements altogether, or perhaps require small systems to submit their data on a less frequent basis than annually. We solicit comment on how we may best tailor the information we require to the cost-of-service standards and

¹⁰¹ Communications Act, Section 623(g), 47 U.S.C. § 543(g).

¹⁰² Order, 8 FCC Rcd 226 (1992).

¹⁰³ Report and Order, at para. 446.

¹⁰⁴ Order, 8 FCC Rcd 226 (1992).

accounting requirements proposed herein, as well as to the rate regulatory framework adopted in the Report and Order.¹⁰⁵

89. Alternatively, instead of requiring reporting from each cable operator, we could rely on an annual survey of cable systems. We tentatively conclude that we should adopt this approach. Relying on a sampling of systems would reduce the total administrative burdens imposed on the industry, while at the same time providing adequate data for purposes of administering rate regulation. We seek comment on the appropriate sampling methodology we could employ, and on how to select the systems that would be surveyed.¹⁰⁶ We further seek comment on how to treat small systems within a survey approach to gathering information on cable rates and services.

90. In the Report and Order, we also stated that we would explore in this proceeding whether we should impose any collection of information requirements regarding leased channel access. We stated our intention to incorporate into our general reporting and monitoring process certain mechanisms particular to gathering information on leased commercial access.¹⁰⁷ We believe information such as the channel capacity designated for leased commercial access, the percentage of such capacity actually used, the percentage used by certain categories of customers, and the rates charged to leased access users could facilitate our ability to monitor provision of leased commercial access by cable operators. Accordingly, we seek comment on whether we should require reporting of this, and similar information, concerning leased commercial access by means of the two alternatives discussed above.

VIII. Initial Regulatory Flexibility Act Analysis

91. Pursuant to Section 603 of the Regulatory Flexibility Act, the Commission has prepared the following initial regulatory flexibility analysis (IRFA) of the expected impact of these proposed policies and rules on small entities.

¹⁰⁵ We also solicit comment on whether we should impose any reporting requirements on systems that change ownership. We solicit comment on whether we should obtain information concerning the purchase price, the purchase price per subscriber, the amount of goodwill paid, the amount of excess acquisition costs paid, and the actual value of tangible assets. We solicit comment generally on this proposal, and on other information related to the sale of a cable system we should require.

¹⁰⁶ Communications Act, Section 623(1), 47 U.S.C. Section 543 (1).

¹⁰⁷ Report and Order, at para. 530.

Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the regulatory flexibility analysis. The Secretary shall cause a copy of the Notice, including the initial regulatory flexibility analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. Section 601 et seq. (1981).

92. Reason for action. The Cable Television Consumer Protection and Competition Act of 1992 requires the Commission to prescribe rules and regulations for determining reasonable rates for basic tier cable service and to establish criteria for identifying unreasonable rates for cable programming services. The Commission has adopted rate regulations that require a comparison to the rate of cable systems subject to effective competition, as defined in the Cable Act of 1992. This Notice proposes to establish regulations governing the setting of rates for regulated cable service based on costs.

93. Objectives. To propose rules to implement Section 623 of the Cable Television Consumer Protection and Competition Act of 1992. We also desire to adopt rules that will be easily interpreted and readily applicable and, whenever possible, minimize the regulatory burden on affected parties.

94. Legal Basis. Action as proposed for this rulemaking is contained in Sections 4(i), 4(j), 303(r) and 623 of the Communications Act of 1934, as amended.

95. Description, potential impact and number of small entities affected. Until we receive more data, we are unable to estimate the number of small cable systems that would be affected by any of the proposals discussed in the Notice. We have, however, attempted to reduce the administrative burdens and cost of compliance for cable systems that have 1,000 or fewer subscribers as required by Section 623(i) of the Cable Act of 1992.

96. Reporting, record keeping and other compliance requirements. The proposals under consideration in this Notice include new reporting and record keeping requirements for cable systems. These reporting requirements include the possibility of filings by cable operators of financial and/or leased access data annually at the Commission or participating in an annual survey. Additionally, this Notice proposes the use of a form to submit data that is to be presented to the regulating entity in a cost-of-service showing by a cable operator. Furthermore, the Notice proposes general cost accounting and cost allocation requirements that could be imposed on the cable industry.

97. Federal rules which overlap, duplicate or conflict with this rule. None.

98. Any significant alternatives minimizing impact on small entities and consistent with stated objectives. Wherever possible, the Notice proposes general rules, or alternative rules for small systems, to reduce the administrative burdens and cost of compliance for cable systems that have 1,000 or fewer subscribers as required by Section 3(i) of the Cable Act of 1992.

IX. Paperwork Reduction Act

99. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a new or modified information collection requirement on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

X. Procedural Provisions

100. For purposes of this non-restricted informal rulemaking proceeding, members of the public are advised that ex parte contacts are permitted from the time of issuance of a notice of proposed rulemaking until the time a draft Order proposing a substantive disposition of the proceeding is placed on the Commission's Open Meeting Agenda. In general, an ex parte presentation is any written or oral communication (other than formal written comments or pleadings and oral arguments) between a person outside this addresses the merits of the proceeding. Any person who submits a written ex parte presentation addressing matters not fully covered in any written summary must be served on this Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each ex parte presentation discussed above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally Section 1.1231 of the Commission's Rules. 47 C.F.R. §1.1231.

101. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. Sections 1.415 and 1.419, interested parties may file comments on or before **August 25, 1993** and reply comments on or before **September 14, 1993**. To file formally in this proceeding, you must file an original plus four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments and reply comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W. Washington, D.C.